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ALEXANDER L. STEVAS,
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No. 82-315

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE STATE OF OREGON,

Petitioner,

v.

GARY PATRICK ROBERTI,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the facts of this case, including the subjective intent of the arresting officer, properly support a finding that the Defendant was placed in a situation which was sufficiently "custodial" to trigger the need for Miranda warnings?

Is a person "deprived of his freedom of action in any significant way" when he is in fact prohibited from leaving the scene of his questioning by a police officer, even though this fact is not communicated to him?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED.....	i
OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS.....	1
STATEMENT OF THE CASE.....	1,2,3
REASONS WHY THE WRIT SHOULD BE DENIED:	
I. THE OREGON SUPREME COURT'S OPINION IN THIS CASE IS CONSISTENT WITH THE PROTECTION INTENDED TO BE AFFORDED BY MIRANDA.....	3,4,5,6,7,8
II and III. THE OREGON SUPREME COURT'S TEST FOR CUSTODIAL INTERROGATION IS NOT INCONSISTENT WITH THE MAJORITY OF STATE OR FEDERAL DECISIONS.....	8,9,10,11,12
CONCLUSION.....	12,13

TABLE OF AUTHORITIES

CASES CITED	PAGE
Angers v. State, 396 A 2d 157 (Del, 1978).....	10
Escobedo v. Illinois, 378 US 478 (1964).....	11
Estelle v. Smith, ____US ____, 101 S Ct 1866 (1981).....	7
Lowe v. United States, 407 F 2d 1391 (9th Cir, 1969)..	10
Mathis v. United States, 391 U S 1 (1967).....	7
Miranda v. Arizona, 384 US 436, 444 (1965).....	Passim
Orozco v. Texas, 394 US 324 (1969).....	4,5,7
People v. Allen, 28 AD 2d 724, 381 NY S2d 602 (1967)	10
People v. P, 21 NY 2d 286, 286 NY 2d 255,]22 NE 2d 255 (1967).....	10
Roberts v. State, 301 So 2d 859 (Miss, 1974).....	10
State v. Morse, 127 Ariz 25, 617 P2d 1141 (1980)....	10
State v. Roberti, 239 Or 59, 76, 644 P2d 1106 (1982).....	2,8
Street v. New York, 394 US 576, 581-582 (1969).....	12
United States v. Harris, 611 F 2d 170 (6th Cir, 1979)...	10

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS.

Defendant accepts these matters as presented by the State.

STATEMENT OF THE CASE

Defendant wishes to briefly supplement this portion of the State's Petition to more fully reflect the details of the lower court's reasoning.

It should first be pointed out that Justice Lent's decision was based on the specific facts of this case. He first noted that

> ...(t)he problem in this case is to determine when a uniformed police officer's questioning of a motorist halted for improper driving became custodial interrogation. I would hold that it was from at least as early as the time when the officer had arrived at a decision, although uncommunicated

> to the motorist, to arrest him for driving while under the influence of intoxicants. (State v. Roberti, 239 Or 59, 76, 644 P2d 1106 (1982)

He then discussed in detail the Miranda rationale and decided that any inquiry into the issue of custody should have ended, at least in this case, when the officer made up his mind to place the Defendant under arrest. However, he noted that the objection at the trial level was based upon more general grounds, and concluded that

> ... the record discloses circumstances in this case that would lead any reasonable man in the position of the defendant to realize that he was not free to leave. (293 Or at 90)

The final foundation for his decision was thus based on his opinion that

> (i)mmediately prior to the time the question was asked, a reasonable person in the same circumstances would have believed he was not free to leave, and this defendant was, in fact, not free to leave by reason

> of the officer's decision to prevent defendant's leaving. I would hold that the question was, therefore, custodial interrogation, and the defendant's objection should have been sustained. (293 Or at 90-91)

REASONS WHY THE WRIT SHOULD BE DENIED

I

THE OREGON SUPREME COURT'S OPINION IN THIS CASE IS CONSISTENT WITH THE PROTECTION INTENDED TO BE AFFORDED BY MIRANDA.

The State essentially says that this decision is inappropriate because it expands the import of Miranda from the limited environment of the "post-arrest stationhouse setting" to now include "pre-arrest on-the-scene questioning." Miranda has never in fact been so limited, and is not expanded by this opinion.

Although the factual seetings in the Miranda cases involved rather severe stationhouse questioning, there was no intent to confine the application of the opinion to

such an environment. Indeed, if this Court had so intended, it would not have carefully noted that "custodial interrogation" is not limited to the stationhouse, but means

> ... questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. (Miranda v. Arizona, 384 US 436, 444 (1965))

Soon after Miranda it was clearly established that on-the-scene questioning, in fact, questioning at the defendant's home, could still be "custodial" if the officers involved had decided to arrest the suspect. This was true even though the inquiries by the investigators were brief and unobtrusive. (See Orozco v. Texas, 394 US 324 (1969) [1])

[1] In Orozco it is not altogether clear whether the police officers told the Defendant that he was under arrest. However, the opinion certainly seems to intimate that the decision to arrest was uncommunicated. This is evidenced by the fact that the majority opinion indicates

This opinion, to the extent that it applies to "pre-arrest on-the-scene questioning" is certainly no departure from prior authority from this court, particularly Orozco.

However, the State further contends that the Oregon Court's decision is also inappropriate because it failed to generally require "coerciveness" before the Defendant could be entitled to be informed of his rights. Neither does Miranda contain such requirement. Miranda essentially seeks to prevent the police from improperly eliciting incriminating statements from unknowing and unprotected accuseds, therefore

1 (Continued)
that the police felt that the defendant was under "arrest" as soon as he told them his name. The quotation marks were evidently inserted to indicate that no actual arrest was made, nor the intent communicated. The dissent does not point out that there was a formal arrest, but on the contrary notes that there was "no prolonged interrogation, no unfamiliar surroundings, no opportunity for police to invoke those procedures which moved the majority in Miranda." (Orozco, 385 US at 330)

doing violence to the basic Constitutional protection against self-incrimination. The most flagrant examples of such official impropriety were embodied in abhorrent cases of extreme physical abuse. However, Miranda similarly condemned confessions procured through psychological pressure or simple trickery. (See Miranda v. Arizona, supra, 384 US 436, 445-450, 453[2])

To remedy these excesses, Miranda devised a two-fold approach to questioning. First, it demanded that the defendant have knowledge of his rights by requiring the police to inform him of such constitutional safeguards prior to any custodial questioning. Second, it employed the exclusionary rule to prohibit the use of evidence which was elicited from a defendant who was either uninformed of his rights, or was unrespected

2 "The interrogators sometimes are instructed to induce a confession out of trickery."

when he attempted to assert them. Coercion was not required to trigger Miranda. Instead, the opinion hoped to prevent the situation from arising. It does so by the simple requirement that a party be informed of his rights whenever he is placed in custody or his freedom is significantly impaired. The opinion nowhere says that custody or deprivation of freedom equals coercion, or vice-versa.[3]

[3] Orozco seems to clearly indicate that a coercive setting is not necessary. Other authorities similarly support this reasoning. In Mathis v. United States, 391 US 1 (1967) the defendant was "in custody" for a completely separate state offense. He was then asked a few questions concerning a potential tax violation. He was not informed of his rights, and his statements were suppressed. Although "in custody", there was none of the coercive "station-house" environment as evidenced in the Miranda cases. In Estelle v. Smith, ___ US ___, 101 S Ct 1866 (1981) the defendant was similarly in custody while examined by a psychiatrist with regard to his fitness to proceed in his murder trial. He was not placed in a coercive environment, but the court excluded testimony of the psychiatrist concerning

The Roberti opinion merely draws the logical conclusion that one is deprived of his freedom when he is in fact not free to go. It is absolutely irrelevant that this restraint is not apparent. The Oregon Court also notes that, in addition, the facts in this case would lead any reasonable man to believe that he was restrained. Under either situation, the attending officer must inform the accused of his rights before interrogation. It was not done here, and the statement was suppressed. There is nothing unusual in such reasoning, nor is there reason for this Court to grant the State's Writ.

II and III

THE OREGON SUPREME COURT'S TEST FOR CUSTODIAL INTERROGATION IS NOT INCONSISTENT WITH THE MAJORITY OF STATE OR FEDERAL DECISIONS.

3 (Continued)
defendant's mental state when it was introduced at his hearing on whether to impose the death sentence.

The State attempts to characterize this decision as one which ignores objective circumstances surrounding interrogation and instead places total reliance on the subjective intent of the involved officer. Indeed, the State says that

> (t)he Oregon court holds that an officer's uncommunicated intent to arrest or detain 'ends the inquiry' of whether on-the-scene questioning is custodial. (State's Brief, at 17)

In fact, the majority opinion noted that in this case the inquiry should have ended at such point, but also went on to point out that the objective facts reasonably inferred a custodial situation. (See Statement of the Case, supra)

In addition, even if the decision rested solely on the officer's intent, which it does not, it would not be inconsistent with most authorities. Indeed, out of the multitude of cases cited by the State, there are only a handful where the

court rules that Miranda warnings were not required at the point when the officer had in fact decided that the suspect was not free to leave. (See Lowe v. United States, 407 F 2d 1391 (9th Cir, 1969; People v. P, 21 NY 2d 286, 286 NY 2d 225, 233 N E 2d 255 (1967)[4]; United States v. Harris, 611 F 2d 170 (6th Cir, 1979); State v. Morse, 127 Ariz 25, 617 P2d 1141 (1980)[5]; Roberts v. State, 301 So 2d 859 (Miss 1974); Angers v. State, 396 A 2d 157 (Del 1978)) All of the remaining authorities recognize that the officer's subjective intent can at least be a factor in determining whether a

[4] People v. Allen, 28 AD 2d 724, 381 NY S 2d 602 (1967) also adopts this reasoning, but is, like People v. P, a New York case, rather than an opinion from another jurisiction.

[5] Morse essentially relies on Lowe, a case arising in Arizona.

situation has reached a point where Miranda should be complied with. Such cases point out that subjective intent is not necessarily dispositive, but they do not then say that such a factor, or any other, can not be singularly sufficient to trigger Miranda.

In this particular setting, the Oregon Court considered the officer's intent as sufficient to require Miranda warnings to be given. It based such conclusion on the uncontroverted evidence that the Defendant was in fact deprived of his liberty. It then buttressed its opinion by a finding that the facts would have convinced a reasonable man that he was restrained.[6] There is nothing far-fetched in his reasoning.

[6] The State also contends that the Oregon court has equated "focus" with "custody", relying on Escobedo v. Illinois, 378 US 478 (1964). Such discussion is only footnoted by the majority, and is not pivotal to the opinion. To the extent it is relied upon, it is not inconsistent with Miranda, especially when the facts in this case show that "focus" meant "decision to arrest." Other cases

The State finally points out various inconsistent applications of Miranda in a traffic setting, apparently questioning whether such warnings are applicable at all. This argument was not raised below, and should not be considered by this Court. (Street v. New York, 394 US 576, 581-582 (1969))

CONCLUSION

The State seeks review by mischaracterizing the scope of this decision. It does no more than logically consider a police officer's subjective intent to restrain a defendant as a sufficient deprivation of freedom to require Miranda warnings. The Court also found alternative grounds for its opinion that are totally consistent

6 (Continued)
discussed by the State deal in factual settings where "focus" was likened to "probable cause", or other more nebulous concepts.

with the arguments now proffered by the State. There is nothing in this case which has sufficient impact to warrant an examination by this body.

Respectfully submitted,

BROWN, BURT, SWANSON, LATHEN & ALEXANDER

By: J. MICHAEL ALEXANDER
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September 22, 1982

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